

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff and Respondent,

No. CR 08-461 PJH
C 11-0298 PJH

v.

**ORDER DENYING RULE 36
MOTION**

MINH TRUNG NGO,

Defendant and Movant.

Before the court is petitioner Min Trung Ngo's ("Ngo") pro se August 4, 2011 motion "to vacate judgment pursuant to Rule 36, *in pari materia* to Rule 60(b) of Fed. R. Civ. Proc. 60(b)." Ngo filed the motion following the court's July 19, 2011 order denying Ngo's motion to vacate his sentence under 28 U.S.C. § 2255.

Federal Rule of Criminal Procedure 36 provides that "[a]fter giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission." Rule 36 is *not* comparable to Federal Rule of Civil Procedure 60(b). Unlike Rule 60(b), Rule 36 is a vehicle for correcting clerical mistakes *only*. See *United States v. Penna*, 319 F.3d 509, 513 (9th Cir. 2003). It may not be used to correct other alleged errors, including substantive errors and/or judicial errors in sentencing. *Id.*

1 The court sees no reason to revisit its prior order denying Ngo's motion to vacate his
2 sentence under § 2255, nor does Rule 36 provide the authority for it to do so. The court
3 therefore DENIES Ngo's Rule 36 motion.

4 The court further notes that along with his current motion, Ngo filed a notice of
5 appeal, which has been forwarded to the Ninth Circuit and for which the Ninth Circuit has
6 assigned a case number. Accordingly, while Ngo's appeal is pending, Ngo is advised that
7 future filings should be directed to the Ninth Circuit Court of Appeals.

8 This order fully adjudicates the motion filed at no. 686 of the clerk's docket for this
9 case.

10 **IT IS SO ORDERED.**

11 Dated: September 7, 2011



PHYLLIS J. HAMILTON
United States District Judge